

Report on the

# Board of Court Reporting

Montgomery, Alabama



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July 27, 2011

Senator Paul Bussman  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Bussman:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Board of Court Reporting** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Court Reporting**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,



Ronald L. Jones  
Chief Examiner

Examiner  
Julie J. Garner



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## **PROFILE**

### **Purpose/Authority**

The Board of Court Reporting was created by Act No. 2006-200 to establish and maintain a standard of competency for persons engaged in the practice of court reporting. The board licenses qualified persons to practice court reporting in Alabama and prescribes the qualifications for licensure. The board operates under authority of the *Code of Alabama 1975*, Sections 34-8B-1 through 34-8B-18.

<b><i>Characteristics</i></b>	
<b>Members and Selection</b>	<p>7 members</p> <ul style="list-style-type: none"><li>• Three members appointed by the governor from a list of three names for each appointment submitted by the Alabama Court Reporters Association (ACRA), the National Court Reporters Association (NCRA), the Nation Verbatim Reporters Association (NVRA), and the Alabama State Bar Association</li><li>• One member appointed by the Lieutenant Governor from a list of three names submitted by the Alabama Bar Association</li><li>• One member appointed by the President Pro Tempore of the Senate from a list of three names submitted by the Alabama Court Reporters Association</li><li>• One member appointed by the Speaker of the House of Representatives from a list of three names submitted by the Alabama Court Reporters Association</li><li>• One member appointed by the Chief Justice of the Alabama Supreme Court from a list of three names submitted by the Administrative Office of Courts</li></ul>
<b>Term</b>	<p>4 year staggered terms May not serve more than two consecutive terms.</p> <p><i>Code of Alabama 1975</i>, Section 34-8B-4(e) and (f)</p>

<b>Qualifications</b>	<ul style="list-style-type: none"> <li>• Two official court reporters certified at a professional level by NCRA or NVRA,</li> <li>• Two freelance court reporters certified at a professional level by NCRA or NVRA,</li> <li>• Two members in good standing with the Alabama State Bar Association,</li> <li>• One member from the Administrative Office of Courts</li> </ul> <p><i>Code of Alabama 1975</i>, Section 34-8B-4(b)</p> <ul style="list-style-type: none"> <li>• All members of the board must be citizens of the United States and the state of Alabama.</li> </ul> <p><i>Code of Alabama 1975</i>, Section 34-8B-4(d)</p>
<b>Racial Representation</b>	<p>No racial representation requirement.</p> <p>2 black members currently serving.</p>
<b>Geographical Representation</b>	<p>No geographical representation requirement.</p>
<b>Consumer Representation</b>	<p>No statutory requirement.</p>
<b>Other Representation</b>	<p>Membership must be inclusive and reflect the racial, gender, geographic, urban/rural and economic diversity of the state. The board shall annually report to the Legislature by the second legislative day of each regular session to what extent the board has complied with the diversity provisions provided for in this subsection. (The board has complied with this requirement)</p> <p><i>Code of Alabama 1975</i>, Section 34-8B-4(g)</p>
<b>Compensation</b>	<p>None</p> <p>Travel expense reimbursement the same as paid to state employees.</p> <p><i>Code of Alabama 1975</i>, Section 34-8B-4(j)</p>

<b><i>Operations</i></b>	
<b>Administrator</b>	<p>Paula McCaleb, Executive Director Representing – Leadership Alliance, L.L.C.</p> <p>The board contracts with Leadership Alliance, L.L.C., a private management firm, for facilities, administrative, management, and logistical support.</p> <p>Current Contract Amount - \$60,000 annually.</p>
<b>Location</b>	<p>2011 Berry Chase Place Montgomery, AL 36117 Office Hours: Monday – Friday 8:30 – 4:30</p>
<b>Examinations</b>	<p>Applicants for licensure must complete one of the following examination alternatives:</p> <ol style="list-style-type: none"> <li>1. Pass the National Court Reporters Association Written Knowledge Examination, and the Alabama Skills Examination, or</li> <li>2. Pass the National Court Reporters Association Registered Professional Reporter Examination, or</li> <li>3. Pass the National Verbatim Reporters Association Certified Verbatim Reporter Examination.</li> </ol> <p>The board is required to hold at least two reporter examinations each year. Examinations are administered at Gadsden State Community College and Prince Institute of Professional Studies in Montgomery. Exam fees are paid by the applicant directly to the testing agencies.</p> <p>Examination pass/fail rates for students were not available.</p> <p><b><i>Code of Alabama 1975</i></b>, Section 34-8B-10</p>
<b>Licensees</b>	<p>512 Active Licensees 7 Temporary Licensees</p> <p>As of March 24, 2011</p>



<b>Reciprocity</b>	<p>Enabling statutes allow for reciprocal agreements with any state, agency, or other entity that licenses, certifies, or registers court reporters (NCRA or NVRA, or both) if the board finds that the state, agency, or other entity has substantially the same or more stringent requirements than the board.</p> <p>The board does not have reciprocal agreements with any state.</p> <p><i>Code of Alabama 1975</i>, Section 34-8B-11</p>
<b>Renewals</b>	<p>All licenses expire annually on September 30. A late penalty of 20% of the license fee for each month not renewed and revocation after 6 months.</p> <p><i>Code of Alabama 1975</i>, Section 34-8B-13 <i>Code of Alabama 1975</i>, Section 34-8B-17(5)</p>
<b>Continuing Education</b>	<p>5 hours every 36 months for active licensees upon renewal. 15 hours in the preceding 12 months for inactive licensees seeking license restoration.</p> <p><i>Code of Alabama 1975, Section 34-8B-13</i> Administrative Rule 257-X-6-.01 &amp; 257-X-2-.06</p>
<b>Employees</b>	<p>No direct employees – administrative and management services are provided under contract with Leadership Alliance, L.L.C.</p>
<b>Legal Counsel</b>	<p>Bettie Carmack, Employee of the Attorney General’s Office</p>
<b>Subpoena Power</b>	<p>None other than as provided in the Administrative Procedure Act.</p> <p><i>Code of Alabama 1975</i>, Section 41-22-12(c)</p>

<b>Internet Presence</b>	<p>The board's website at <a href="http://www.abcr.alabama.gov">www.abcr.alabama.gov</a>, contains:</p> <ul style="list-style-type: none"> <li>• Board staff and contact information</li> <li>• Administrative rules and forms</li> <li>• Enabling Statutes</li> <li>• Exams</li> <li>• Board Calendar</li> <li>• Licensee Roster</li> <li>• ACRA Newslines</li> <li>• Example of Certification Page</li> <li>• Disciplinary Actions</li> <li>• Continuing Education Information</li> <li>• Board Members</li> <li>• Minutes</li> <li>• Directions</li> <li>• Links to Alabama Court Reporter Association (ACRA), to National Court Reporters Association (NCRA), and to National Verbatim Reporters Association (NVRA).</li> <li>• Links to Online Services</li> <li>• Links to Survey/Comments</li> </ul>
<b>Attended Board Member Training</b>	1 board member
<b><i>Financial</i></b>	
<b>Source of Funds</b>	License Fees
<b>State Treasury</b>	Yes, Special Revenue Fund 1169
<b>Required Distributions</b>	None
<b>Unused Funds</b>	<p>Any amount remaining in the fund at the end of each fiscal year in excess of two hundred fifty thousand dollars (\$250,000) shall be available to the board to provide for the education and training of court reporters.</p> <p><i>Code of Alabama 1975, Section 34-8B-12</i></p>

## **SIGNIFICANT ISSUES**

There are no new reportable significant issues.

## **STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES**

### **SIGNIFICANT ISSUE 2009-02**

**Responses to our questionnaires by board members and the executive director indicate that the most significant issue currently facing the board is to pass legislation to amend its statutes.**

The board attempted to amend its statutes in HB 522 (Rep. Black) and in SB 387 (Sen. Lindsey) of the 2008 regular session and HB 800 (Rep. Black) and HB 828 (Rep. Black) in the 2009 regular session. The bills, which did not become law, provided for substantial changes to the board's statutes, added provisions for temporary licensure for new graduates, added a deadline for grandfathering, amended language that made the board liable for the unlawful actions of its licensees, removed a requirement for the chief justice board appointee to be a member of the Alabama Judicial Conference, removed detailed requirements regarding examination notifications, and removed a reference to board member compensation, among other housekeeping changes.

**Current Status – Partially Resolved** - Act 2010-554 amended the board's statutes to provide for temporary licenses, removed the board from liability for the unlawful actions of its licensees, and removed the requirement for the chief justice board appointee to be a member of the Alabama Judicial Conference. The board submitted HB 317 (See Appendices) sponsored by Representatives Buttram, Sanderford, and McClendon and companion bill SB492 sponsored by Senator Keahey in the 2011 regular session to amend the statutes to:

- Change the prerequisite education requirement from high school to an accredited court reporting program.
- Eliminate the requirement to make an annual report to the Governor's Office and to the Secretary of State
- Eliminate the word "compensation" as it applies to board members. (The board does not wish to receive compensation.)
- Provide a deadline for grandfathering (None exists in current statutes.)
- Provide authorization to charge reasonable processing fees (Reasonable fees for copies, change of name and address).
- Correct a discrepancy in the temporary licensure provision. – Current law requires a temporary license to be valid on the applicant's graduation date, which can be before the board receives the application for license and issues the license. The proposed language would provide for a temporary license to be valid on the date the license is issued.

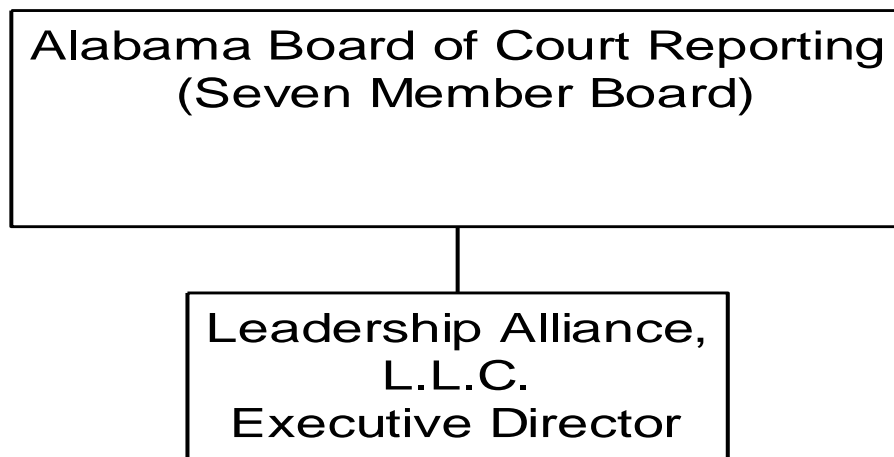
Neither bill became law.

### **Significant Issue 2008-6**

Eleven (11) of the 25 licensees (44%) who answered our questionnaire responded to the question, **“What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Court Reporting doing to address the issue(s)?”** by indicating that “gifting” is among the most significant issues facing the court reporting profession.

In our report of the board’s operations prepared for the Sunset Committee prior to the 2008 Legislative Session, we presented one board member’s description of gifting as, “...freelance reporters/reporting companies are giving substantial contributions, gifts and inducements, sometimes in the form of reward points, and often in direct proportion to the invoice amount of the reporting bill in order to entice a secretary, paralegal, lawyer or law firm to send the reporter/reporting firm business. Also, sometimes these reward points are requested in differing forms: certificates, personal bill payment, vacations, etc. Our bill addresses the reporters and not the reporting firms. The Bar has chosen not to police itself in this matter. Therefore, if reporters only and not the firm owners were prohibited from gifting, small firms whose owners could not afford to only manage the firms and not report also could easily be put out of business. Ideally, the issue would be better solved by the Bar establishing ethical guidelines to prohibit receipt of a gift over a certain amount per year.”

## **ORGANIZATION**



## **PERSONNEL**

There are no direct employees. The board contracts with Leadership Alliance, L.L.C. to provide administrative, management, and logistical support; including an executive director. Current compensation for these services is \$60,000 annually. Leadership Alliance, L.L.C. maintains the board's records and performs the board's administrative functions from its Montgomery office.

### **Legal Counsel**

Bettie Carmack, Assistant Attorney General and employee of the Attorney General's Office, provides legal services for the board.

## **PERFORMANCE CHARACTERISTICS**

**Number of Licensees per Employee** – N/A - The board contracts with Leadership Alliance, L.L.C. to provide administrative services.

**Operating Disbursements per Licensee (2009-10)** – \$130.10

### **Number of Persons per Licensee in Alabama and Surrounding States**

	Population*	Number of Licensees	Persons Per Licensee
<b>Alabama</b>	<b>4,779,736</b>	<b>519</b>	<b>9,210</b>
Florida	18,801,310	N/A**	N/A**
Georgia	9,687,653	1,225	7,908
Mississippi	2,967,297	466	3,368
Tennessee	6,346,105	618	10,269

\*2010 U S Census

\*\*Florida does not license court reporters.

### **Notification to Licensees of Board Decisions to Amend Administrative Rules**

The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes.

## **COMPLAINT HANDLING**

The *Code of Alabama 1975*, Section 34-8B-6 and Board Rules 257-X-5-.04 through 257-X-5-.11 provide procedures for receipt, documentation and investigation of complaints against licensees and disciplinary actions.

### **Complaint Procedures**

<b>Initial Contact/ Documentation</b>	The board requests that all complaints be filed in writing, addressed to the chair of the board, and signed on a form prescribed by the board and may be submitted in person, by fax, or mailed to the board's office. Board members and staff may bring complaints in the same manner as prescribed in the board's statutes and administrative code. The board confirms receipt of complaints by mail within 5 business days.
<b>Anonymous Complaints</b>	The board does not accept anonymous complaints.
<b>Investigative Process</b>	An investigative committee composed of the board's executive director, legal counsel, and one board member performs an initial review of the complaint. If an investigation is warranted, board retains an investigator who works under direction of the executive director. At the conclusion of the investigation, the investigator submits a written report to the investigative committee who acts upon the report and who may either: (1) Dismiss complaint (2) Commence disciplinary proceedings (3) Accept voluntary surrender of a license.
<b>Probable Cause Determination</b>	An investigative committee determines compliance with enabling statutes and administrative rules of the board after reviewing the investigator's report.
<b>Resolution without formal Hearing</b>	Complaints or controversies may be considered and resolved by the board designee through alternative dispute resolution, informal conferences, meetings, or other informal means. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and approved by the board.

<b>Formal Hearing</b>	<p>If the complaint is not resolved by informal means, the board conducts a hearing at which time the board may dismiss the charges, may impose a fine not to exceed \$1,000, or may revoke or suspend the license of the licensee. The licensee may appeal a decision of the board by submitting a request to the board for consideration within 90 days following the decision of the board. If no resolution is achieved, further appeals can be submitted to the circuit court in the jurisdiction of the residence of the licensee.</p> <p>The board adopts by reference as its rules the <i>Code of Alabama, 1975</i> Sections 41-22-1 et seq., Alabama Administrative Procedure Act, as amended, governing contested cases, appeals, and related proceedings.</p> <p>The board may utilize the services of a hearing officer selected from a list provided by the Attorney General's Office and appointed (contracted) by the board.</p> <p>The board is represented by its legal counsel.</p> <p>The board member involved in investigating the complaint abstains from asking any questions or voting during a hearing.</p>
<b>Notification of Resolution to the Complainant</b>	<p>The board notifies the complainant of the resolution of the complaint in writing. The resolution is also posted on the board's website under Disciplinary Actions.</p>

Schedule of Complaints Resolved FY 2008 through FY 2010				
Year/ Number Received	Year/Number Resolved**			Pending
	2008	2009	2010	
2008/ 2	1	1		0
2009/ 6		6	0	0
2010/ 2*			2	0
Source: Executive Director				

\*As of March 14, 2011

\*\*Resolved – Final order or settlement agreement in hand.

**Average Time to Resolve Complaints-** 2 ½ Months

## **REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

The board's licensees are not regulated by any other agency; however, conduct of the profession is guided by the official *Alabama Court Rules*.

## **SMART GOVERNING**

We reviewed the board's SMART reports for the 2010 and 2011 fiscal years for compliance with these standards and present the following observations:

### **2010 SMART Quarterly Performance Report**

<b>2010 Goals</b>				
<b>GOALS</b>			<b>COMMENTS</b>	
Goal 1 – To provide services online so that 90% of license transactions are processed via the web by 2010.			Goal is set to be accomplished in the current year. Goals, by definition, are multi-year, long-term targets.	
<b>OBJECTIVES</b>	<b>UNIT OF MEASURE</b>	<b>PERFORMANCE TARGET</b>	<b>ACTUAL</b>	<b>COMMENTS</b>
Efficiency – Process all requests within 5 business days.	Day	5	1	Objective is appropriate.

### **2011 SMART Quarterly Performance Report**

2011 Goals				
GOALS			COMMENTS	
Goal 1 – To implement paperless records by 2014.			Goal is appropriate.	
2011 Objectives				
OBJECTIVES	UNIT OF MEASURE	TARGET	ACTUAL	COMMENTS
Transfer records to paper less.	Paperless records system	Paperless records system	Year not yet complete	Objective does not measure progress within the current year toward accomplishment of the long-term goal.
Maintain current cost per licensee	Cost per licensee	Maintain cost per licensee	Year not yet complete	Objective does not include either a benchmark cost amount to maintain or a target cost to compare to the benchmark



## **FINANCIAL INFORMATION**

### **Source of Funds –**

The board's operating funds are derived from amounts authorized by law to be collected while carrying out its licensing/regulatory duties. The board operates through the State Treasury from Fund 1169 created by law as the Alabama State Board of Court Reporting Fund. All funds unspent and unencumbered at the end of the fiscal year that exceed \$250,000 by law are available to the board to provide for the education and training of court reporters. The board's enabling statutes provide that at all times the board shall retain a sum not in excess of \$250,000 to meet any emergency which may affect the efficient operation of the board. (*Code of Alabama 1975*, Section 34-8B-12)

### **Schedule of Fees**

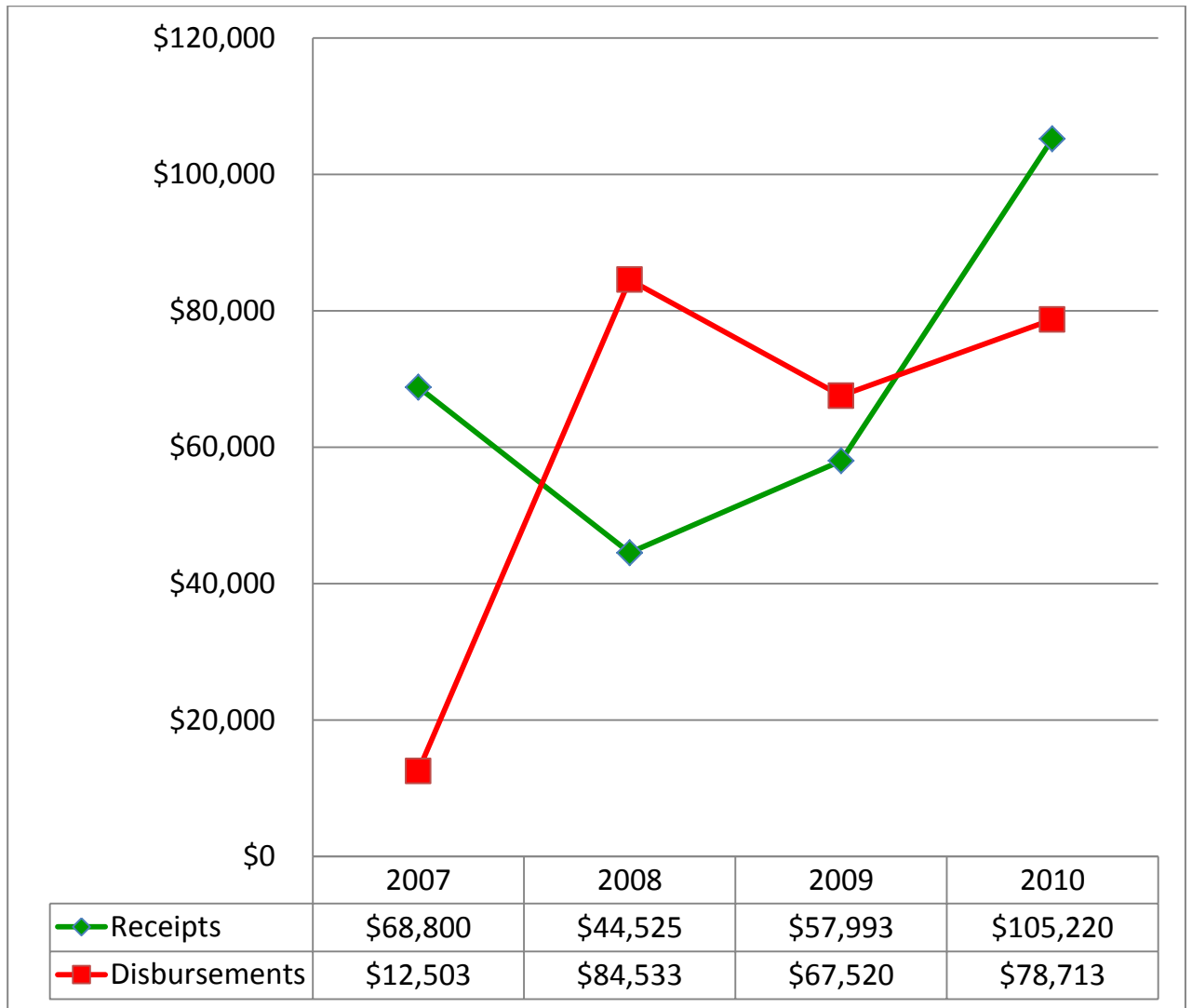
<b>FEE TYPE/PURPOSE</b>	<b>STATUTORY AUTHORITY</b>	<b>RULE</b>	<b>AMOUNT AUTHORIZED</b>	<b>AMOUNT COLLECTED</b>
License Fee	34-8B-5(3)	257-X-7 Appendices I	Set by board rule – no limit	\$ 200.00
Application Fee	34-8B-17(1)	257-X-7 Appendices I	Set by board rule – no limit	\$ 50.00
Renewal Fee	34-8B-5(3)	257-X-7 Appendices I	Set by board rule – no limit	\$ 200.00
Late Renewal Fee	34-8B-17(5)	257-X-7 Appendices I	20% of license fee for each month late	20% of license fee for each month late
Temporary License Renewal Fee	34-8B-17(3)	257-X-7 Appendices I	Set by board rule – no limit	\$ 300.00
Re-Instatement Fee	34-8B-17(4)	257-X-7 Appendices I	Set by board rule – no limit	\$300.00

**Schedule of Receipts, Disbursements, and Balances**

October 1, 2006 through September 30, 2010

	2009-10	2008-2009	2007-08	2006-07
<b><u>Receipts</u></b>				
License Fees	\$ 105,220.00	\$ 57,992.60	\$ 44,525.00	\$ 68,800.00
<b><u>Disbursements</u></b>				
In-state Travel	3,062.95	504.09	3,997.08	565.90
Rentals and Leases	-	-	90.00	-
Utilities and Communciations	939.98	466.46	1,278.31	-
Professional Services	72,452.75	65,999.05	74,978.76	11,732.63
Supplies, Materials, and Operating	2,256.95	549.92	4,188.54	204.90
Total	78,712.63	67,519.52	84,532.69	12,503.43
Excess/(Deficiency) of Receipts over Disbursements	26,507.37	(9,526.92)	(40,007.69)	56,296.57
Cash Balances at Beginning of Year	6,761.96	16,288.88	56,296.57	-
Cash Balances at End of Year	33,269.33	6,761.96	16,288.88	56,296.57
Reserved for Unpaid Obligations	(1,050.00)	(6,761.96)	(4,100.00)	(16,666.72)
Unreserved Cash Balances at end of Year	\$ 32,219.33	\$ -	\$ 12,188.88	\$ 39,629.85

**Operating Receipts vs. Operating Disbursements (Chart)**



## **QUESTIONNAIRES**

### **Board Members**

Surveys were sent to all seven (7) members of the Board of Court Reporting. Five (5) responded. The percentages shown are based on the number who responded to the question.

- 1. What are the most significant issues currently facing the Board of Court Reporting and how is the Board of Court Reporting addressing these issues?**

**Member 1** - Closing the grandfathering window. ABCR currently is working on legislation to fix this.

**Member 2** - We are experiencing expected when you start up a new regulatory agency for a profession that has existed for years. For an example, it has been a challenge to determine the number of court reporters practicing before the agency was established.

**Member 3** - Dealing with contracting.

**Member 4** - The most significant issue is being able to maintain the board for the good of all reporters in the State, to not lose our status and sunset renewal. Some reporters balk at the dues to be paid, but it is so important to the court reporting profession to have licensed reporters in the state.

**Member 5** - Correcting oversights in the ABCR law that have to deal with reporting requirements, eliminating board member compensation, defining the close of the grandfathering window, and providing authorization to charge reasonable processing fees.

- 2. What changes to the Board of Court Reporting laws are needed?**

**Member 1** - See #1.

**Member 2** - Change in the grandfathering provisions; require that the applicant graduate from a court reporting school; elimination of annual report to Governor and Secretary of State; to have the temporary license last for 18 months from date of graduation instead of date of issue; giving the agency the ability to charge operational fees

**Member 3** - Did not respond.

## ***Board Member Questionnaire***

**Member 4** - I would like to be able to penalize reporters who go against the reporting code of ethics, but unless they are members of ACRA, we have no authority over them. I'd like to be able to police all reporters who have a license, not only those who belong to the state association.

**Member 5** - Passage of House Bill 317 in order to correct the issues listed in number one above.

### **3. Is the Board of Court Reporting adequately funded?**

<b>Yes</b>	<b>4</b>	<b>80.0%</b>
No	1	20.0%

**Member 2** – Funding comes from the license fees which are less than anticipated.

**Member 5** - It was necessary to raise licensure fees in 2010 due to the fact the initial licensure fee was based on an estimate of the number of court reporters within the state of Alabama. That number was found to be too large and the initial funding was not sufficient, thus the increase in annual licensure fees.

### **4. Does the Board of Court Reporting receive regular reports on operations from the chief administrative officer?**

<b>Yes</b>	<b>5</b>	<b>100.0%</b>
No	0	0.0%

**Member 5** – Those reports are presented at each of our quarterly Board meetings and if needs or issues arise between Board meetings, our executive director is in communication with Board members via email or phone.

### **5. Is the Board of Court Reporting adequately staffed?**

<b>Yes</b>	<b>5</b>	<b>100.0%</b>
No	0	0.0%

**Member 5** – The configuration of the Board (i.e., two official court reporters, two freelance court reporters, one judge, and two attorneys) is a very workable arrangement.

*Board Member Questionnaire*

**6. Has the Board of Court Reporting experienced any significant changes to its operations?**

Yes	1	20.0%
No	4	80.0%

**7. Does the Board of Court Reporting plan any significant changes in its operations?**

Yes	0	0.0%
No	5	100.0%

**Licensed Court Reporters**

Surveys were sent to 100 licensees of which 33 responded. The percentages shown are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Board of Court Reporting is necessary to protect public welfare?**

<b>Yes</b>	<b>21</b>	<b>63.6%</b>
No	10	30.3%
Unknown	1	3.0%
No Opinion	1	3.0%

**Respondent 1** – I have been in the business for 21 years and I have never heard of one instance where there was an accusation of someone altering a transcript or performing as a court reporter to the detriment or advantage of one party.

**Respondent 2** – Without certification, the court record (deposition or trial) could be at the mercy of unqualified, untrained persons. Requiring minimum standards certification and continuing education assures accurate, timely transcript production and serves the good of the public in that regard.

**Respondent 3** – Without certification, anyone that drops out of school at any speed can call themselves a reporter and take testimony. They may be relying on a tape backup, but what if that fails? A real, certified reporter can still make a record without a tape backup.

**Respondent 4** – I think the regulation needs to be from the voice of ALL reporters in the State.

**2. Do you think any of the Board of Court Reporting's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	5	15.2%
<b>No</b>	<b>20</b>	<b>60.6%</b>
Unknown	6	18.2%
No Opinion	2	6.1%

**Respondent 1** – In my career I have found that the industry has done an incredible job of monitoring itself. Like any industry, if someone is not capable it does not take long to be found out.

## *Licensee Questionnaire*

**Respondent 2** – The laws, rules, and polices of the Board are similar to or the same as those in other states requiring certification for court reporters. Actually the continuing education requirement for ABCR certification is less than that required of those of us who also have certification at the national level, yet the same amount of time is allowed for earning those CEU's; thus I do not find the Board's laws, rules, or polices restrictive.

**Respondent 5** – I think there should be an age limit on requiring court reporters to obtain continuing education points. The bar association has an age limit. I think there should be a provision put in place that excludes anyone over 65 not to have to obtain continuing education points. It puts a burden on elderly people to travel out of town for two or three days that are quite capable of doing their job.

**3. Do you think any of the Board of Court Reporting's requirements are irrelevant to the competent practice of your profession?**

Yes	6	18.2%
<b>No</b>	<b>23</b>	<b>69.7%</b>
Unknown	1	3.0%
No Opinion	3	9.1%

**Respondent 1** – While I understand the idea of licensing, someone who cannot competently perform as a court reporter is known quickly and, again, the profession weeds itself out nicely.

**Respondent 3** – I'm not sure which requirements you mean specifically. If you mean maintaining CEU's, I think that is a good policy and in line with most other professions.

**Respondent 6** – I do not believe CEU hours are necessary.

**Respondent 7** – Some of the seminars offered at the statewide conventions for CEUs are completely irrelevant to the practice of court reporting; i.e., listening to sales pitch for a blue-green algae product, watching a demonstration of how to use a neti pot.

**4. Are you adequately informed by the Board of Court Reporting of changes to and interpretations of board positions, policies, rules, and laws?**

<b>Yes</b>	<b>21</b>	<b>65.6%</b>
No	7	21.9%
Unknown	2	6.3%
No opinion	3	9.1%



## *Licensee Questionnaire*

**Respondent 2** – The ABCR website is kept current, alerting licensees of approaching renewal dates, opportunities for earning CEU's, etc. Additionally, email notice is also sent alerting of renewal dates and/or any pressing news that should be of concern to licensees.

**Respondent 3** – I'm not aware of any changes, so if any have occurred, then I guess I wasn't informed. Of course, I could always go to their website though.

**Respondent 4** – Probably not as much as I would like to be.

**Respondent 7** – It was unclear in the first couple of years what the Board expected in terms of CEUs...having to get a certain number of hours per year, yet they are good for a certain number of years. Still don't know that rule by heart...have to look it up every time certification deadline comes.

**Respondent 8** – There has been some confusion about the continuing education requirements, but I believe that has been corrected.

**Respondent 9** – It has been confusing regarding the CEUs.

**Respondent 10** – They just post the minutes of the meetings on the website. Unless you go the site, then you do not know what is going on.

**Respondent 11** – To my knowledge.

**Respondent 12** – Not always. Especially, it is very confusing on the CEUs and the changes that have been made. Different people tell different things about the requirements, and I'm afraid I will slip through the crack on an audit. For example, are we allowed to carry over points after the five required are obtained to the next year, and how long are those good for?

**5. Has the Board of Court Reporting performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>32</b>	<b>97.0%</b>
Unknown	1	3.0%

**Respondent 6** – The license fee was increased this year, just to fund the board. I do not agree with increasing our dues/fees to fund a board that I do not believe is necessary to begin with.

**Respondent 10** – Licensing renewal is the same time each year.

**Respondent 13** – They should be updated as soon as you pay your fees!

**6. Do you consider mandatory continuing education necessary for competent practice?**

<b>Yes</b>	<b>23</b>	<b>69.7%</b>
No	10	30.3%

**Respondent 1** – I fail to see the need for continuing education. Like any other business, competition is what requires me to keep up. Unlike the practice of law or accounting, there are not yearly changes that are required to be kept up with. And self-help courses that are offered for credit, such a massage therapy, are not required for me to be a qualified reporter.

**Respondent 2** – The technologies affecting the court reporting profession are continually changing. Continuing education is the best way to assure that all licensees stay current on information, technological advances, and education opportunities that are vital to our profession.

**Respondent 5** – (Same comment as in Question No. 2.) I think there should be an age limit on requiring court reporters to obtain continuing education points. The bar association has an age limit. I think there should be a provision put in place that excludes anyone over 65 not to have to obtain continuing education points. It puts a burden on elderly people to travel out of town for two or three days that are quite capable of doing their job.

**Respondent 6** – Reporters that use the old manual machines are just as competent and capable as those of us who are now computerized. It is simply two different ways of doing the same job. Therefore, I do not see the necessity of continuing education credits to maintain a license. Being a court reporter is like riding a bike. Once you learn how, you never forget. Learning new things is great for those that desire to keep up with the latest and greatest ways, but I do not believe we should be forced to attend conferences to obtain CEU credits.

**Respondent 7** – Yes, provided it is enrichment material. See response to #3.

**Respondent 8** – The reporting profession has changed over the years and you need continuing education to keep apprised of new developments.

**Respondent 10** – If it is not mandatory, then the working reporters will not participate in continuing education. Yes, CEUs are important!! It must be mandatory. All reporters need CE.

**Respondent 12** – Sometimes, if it is pertaining to court reporting, but there are a lot of topics discussed at seminars that have nothing to do with court

## *Licensee Questionnaire*

reporting. Most of those unnecessary topics are very interesting, but I hate to miss jobs and lose money while I'm spending money to attend seminars. I think it is helpful and educational to have seminars though.

**Respondent 14** – somewhat

**Respondent 15** – It seems to be just more burden on me to pay money to stay a court reporter in Alabama as i make less and less money every year. They double the price last year to \$200 a year fee.

**Respondent 16** – I really don't think it's necessary, but it is helpful.

**7. Has the Board of Court Reporting approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

Yes	22	66.7%
No	2	6.1%
Unknown	6	18.2%
No opinion	3	9.1%

**Respondent 2** – In addition to continuing education opportunities that are offered by the Alabama Court Reporters Association and National Court Reporters Association (both offering educational seminars twice a year, for a total of four opportunities), CEU's can be earned by attending any seminar, etc., offered by the Bar Association and approved by the Bar for CLE's for their members.

**Respondent 10** – I do know that ACRA does a good job each year with the midyear and summer convention. Planning conventions is a big responsibility, and you will never please everyone. There are many avenues to get CEUs now due to the Internet.

**Respondent 12** – I usually go out of state to attend seminars to get my CEUs because of my work schedule.

**Respondent 14** – somewhat

**Respondent 15** – I've sent in credit forms a couple times in the last year and heard nothing and wasn't credited for the time.

**Respondent 17** – However, I'd like to see more one-day seminars that would enable us to get 10 CEUs or more. Going to Florida and places like that is nice,

but sometimes money can be an issue and that kind of seminar isn't financially feasible. Local, cost-efficient, one-day seminars work better for me.

**Respondent 18** – More options needed

- 8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Court Reporting doing to address the issue(s)?**

**Respondent 1** – There really haven't been any fundamental changes in my career as relates to the practice of court reporting. There have been changes in some of the ways business is procured, but nothing that affects the final product of the transcript.

**Respondent 2** – Electronic recording that could encroach on the court reporting profession. ABCR's CEU requirement assists licensees in staying up to date on the technological advances that enable them to produce faster and more accurate transcripts, allow them to offer real-time services, and computer aided real-time translation services for the deaf and hearing impaired -- services that are not available with electronically recorded proceedings -- therefore, assisting licensees in their ability to continue in the profession for which they have trained.

**Respondent 3** – Corporate Gifting is a big issue. Contracting is a big issue and controversial. I'm not sure what the Board is doing for either.

**Respondent 4** – The "little man" competing with the big firm that can offer gifting, etc. that then comes in the form of contracting to the larger firms, thus putting the "little man" out of business.

**Respondent 5** – I have been a court reporter in the same circuit for 46 years. When the Judicial Article was passed I had too many years to start back. I therefore had to stay in the supernumerary plan for my retirement. The benefits for the reporters that will be supernumerary reporters and the retired reporters under the State Retirement are not the same. Supernumerary reporters are not allowed in the drop program. We do not have a spousal clause. I think this is making a difference because of age. No one seems to care about this enough to have anything changed for supernumerary to be reporters. If it was changed now it would not cost the state any money and would cost very little in the future.

**Respondent 7** – Court reporting firms offering points or monetary rewards in exchange for business is a practice which has been outlawed in almost every other profession. (2) Non-court reporting firms holding themselves out as being

## *Licensee Questionnaire*

able to provide court reporting services is a detriment to all court reporters in the state.

**Respondent 8** – Gifting and contracting. Not sure what action the Board has taken in this regard or what action they could take.

**Respondent 9** – The biggest issue are firms giving gifts to clients for their business.

**Respondent 10** – Certification, contracting, and gifting. We do have a temporary license now for students which are very positive at this time. There needs to be more stringent rules in regard to contracting and gifting because the small court reporting firms cannot compete with the larger firms who give incentives for their work. Many small firms are losing good court reporters to other occupations because they can no longer make a living in Alabama. Some are leaving the state.

**Respondent 11** – The most significant issue currently facing my profession as a freelance court reporter is my inability to compete with court reporting firms that offer various "compensation" to lawyers and their staff in exchange for receiving jobs. Another very significant issue is the failure of attorneys and court reporting firms to pay freelance reporters in a timely manner. For some reason it is accepted as "that's just the way it is" for court reporting firms to hire subcontractors such as myself, send us on jobs, and then not pay us for that job until the court reporting firm receives payment from its client. When and if the court reporting firm's client ever pays, the subcontractor is then only paid 70 to 50 percent of what the court reporting firm bills the client. I realize there are production costs, but there should be a cap on what a court reporting firm can take as its payment from a subcontractor. Of course, since it is in fact a present Board member who indicated to my agent (who was attempting to collect payment for a job that I had done over nine months prior) that "that's just the way it is in court reporting," I do not foresee a lot of change as to how subcontractor court reporters are paid. In my opinion, if a court reporting firm cannot afford to pay in a timely manner the subcontractor it hires for its jobs, that court reporting firm should not be conducting business. That's how it works with every other business with which I am familiar anyway.

**Respondent 12** – I know of a court reporter that moved to North Carolina for three years without maintaining her court reporter status in Alabama and she was allowed to go right back into court reporting after moving back to Alabama supposedly under the grandfather law. That is wrong. I have not moved from Alabama and I play by the rules. She should too. I also work in Mississippi, but every year I fill out an application for reciprocity and pay dues. I don't slide into Mississippi and just go to work. Another big, big problem. These big court reporting firms -- [REDACTED], for instance -- are paying (writing checks) to

## *Licensee Questionnaire*

paralegals for setting up depositions. I CANNOT compete with that, and it is not right, not fair, and they will put me out of business eventually if it is not stopped. Paralegals are choosing who they want to use as a court reporter because they are being BOUGHT! It has got to stop. I don't want to go to work for a court reporting firm, but I will be forced to if it doesn't stop. It's unfair competition.

**Respondent 14** – Electronic recording. Don't know if Board is addressing it.

**Respondent 15** – i think there are people practicing the court reporting profession in Alabama who don't have a license and I'm not sure anything is being done about it.

**Respondent 16** – For official court reporters, the Administrative Office of Courts not funding things for court reporters, such as, not paying per diem and mileage for attending conferences to obtain the necessary hours needed for keeping their license. This last conference only 50 of the attendees were afforded the privilege of per diem and mileage and they were the first 50 to sign and pay for their conference. Judges seem to always be fully compensated for their conferences.

**Respondent 17** – Threat of video replacing CRs. Not sure what the Board is doing.

**Respondent 18** – The laws governing discovery, ie. mandatory mediation before discovery.

**Respondent 19** – Contracting between reporters and insurance companies making the reporter a financially interested party to the litigation. Gift-giving to attorneys that the attorney's clients are actually paying for unbeknownst to the clients.

**Respondent 20** – One of the most significant issues facing our profession is that of gift giving. The Board has been discussing this issue for some time.

**Respondent 21** - electronic recording devices replacing court reporters

**Respondent 22** - The most significant issue for court reporters is ethics. There are voluntary ethical guidelines, but no ethics law. Because there are no ethics laws for reporters, many freelance firms engage in the practice of gift giving, which is giving points or gifts to the attorneys who are their clients. This is not ethical because, ultimately, the client of the attorney pays for the transcript, and the attorney (or his staff) receive a benefit. The reporting firms pay for these perks in various ways, the most blatant being shrinking the number of words on

## *Licensee Questionnaire*

a page and charging the same amount for the page. I am anxious to introduce legislation which would institute ethics and outlaw the practice of gifting. I would be happy to discuss this matter with anyone who is interested!

**Respondent 23** – Electronic recording reciprocal agreements with Georgia reporters.

**Respondent 24** – Competency

**Respondent 25** – Contracting!!! I know the board has been discussing this but I do not think it has been resolved.

Did Not Respond 10

### **9. Do you think the Board of Court Reporting and its staff are satisfactorily performing their duties?**

Yes	16	48.5%
No	1	1.0%
Unknown	8	24.2%
No Opinion	8	24.2%

**Respondent 1** – Other than a fee collection agency, I'm not sure what the duties are. So far the only disciplinary action taken by the Board is to collect fees for reporters working without a license. This being said, it is obvious that there are not any real widespread problems with the industry.

**Respondent 8** – They have in my dealings with them.

**Respondent 11** – To my knowledge

**Respondent 12** – I hate to be critical because I know it is new and the bumps have to be worked out, but it is hard to communicate with someone on the board that is our contact that doesn't understand your problem if she is not a court reporter or has not been a court reporter.

**Respondent 22** – The staff could be more friendly and helpful to licensees.

**10. Has any member of the Board of Court Reporting or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?**

Yes	0	0.0%
No	32	100.0%

**Respondent 5** – The people in the office that I've dealt with have been more than helpful. They have gone out of their way to help me with any problem I've had. I appreciate people that work at their job like this.

**Respondent 6** – Yes. They increased our license fee to fund the Board.

**Respondent 11** – However, a Board member basically laughed and said to my collection agent, "I'm on the Board" when my agent advised her that we were considered filing a complaint with the Board over nonpayment of jobs that had been performed for that Board member's court reporting firm. That comment indicated to me that it would do no good for us to file any kind of complaint regarding nonpayment, because her position on the Board would prevent anything being done. Apparently she believes her being on the Board makes her somehow untouchable when it comes to collection efforts.



**Complainants**

Surveys were sent to 8 complainants of which 3 responded. The percentages shown are based on the number who responded to the question.

**1. How was your complaint filed with the Board of Court Reporting?**

<b>Regular Mail</b>	<b>1</b>	<b>33.3%</b>
Fax	1	33.3%
Other	1	33.3%

**Respondent 1** – Several complaints

**Respondent 2** – Email

**2. Was receipt of your complaint promptly acknowledged?**

<b>Yes</b>	<b>2</b>	<b>66.7%</b>
No	1	33.3%

**3. If your answer to Question 2 was “YES”, how long after you filed your complaint were you contacted by the Board of Court Reporting?**

Immediately	1	50.0%
<b>Within 10 days</b>	<b>2</b>	<b>100.0%</b>

**4. Was the person who responded to your complaint knowledgeable and courteous?**

Knowledgeable	1	33.3%
Courteous	1	33.3%
<b>Neither</b>	<b>2</b>	<b>66.7%</b>

**5. Did the Board of Court Reporting communicate the results of investigating your complaint to you?**

<b>Yes</b>	<b>2</b>	<b>66.7%</b>
No	1	33.3%

**Respondent 1** – October 7, 2010 complaint sent in against Executive Director/**Paula Scout Mc Caleb** who denied me due process to go before the board committee to state my claim against your court reporter **xxxxxx**  
**xxxxxx**/Calhoun County complaint file and notarize on 10/07/2010 sent certified

### *Complainant Questionnaire*

mail with a total of 7 board members names listed as parties to the complaint to be heard

**Respondent 2** – Was never contacted prior to the decision.

**6. Do you think the Board of Court Reporting did everything it could to resolve your complaint?**

Yes	1	33.3%
No	2	66.7%

**Respondent 1** – I'm unaware of any action taken or performed in the result of the complaints filed.

**7. Were you satisfied with your dealings with the Board of Court Reporting?**

Yes	1	33.3%
No	2	66.7%

**Respondent 1** – I was denied a hearing which violates my constitution rights.

# APPENDICES

## SMART Performance Reports

Thursday, November 18, 2010  
EBO Form 10

### FY 10 SMART Quarterly Performance Report

Page 2 of 3

#### Basic Agency

<b>Agency: 378 - Court Reporting Board</b>				<b>Program: 653 - PRO AND OCCU LICENSING AND REG</b>							
<b>Organization: -</b>				<b>Activity: -</b>							
<b>Key Goal:</b>											
Goal 1	To provide services online so that 90% of license transactions are processed via the web by 2010.								Governor's Priority:	2	
<b>Objectives and Quarterly Targets:</b>											
<b>Performance Measures</b>		<b>First Quarter</b>		<b>Second Quarter</b>		<b>Third Quarter</b>		<b>Fourth Quarter</b>		<b>Annual</b>	
<b>Objectives</b>	<b>Unit of Measure</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>
(O1-Efficiency) Process all requests within five business days.	day	5	1	5	1	5	1	5	1	5	1

Thursday, November 18, 2010  
EBO Form 10

### FY 10 SMART Quarterly Performance Report

Page 3 of 3

#### Basic Agency

How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2009-10 affected your agency in meeting its desired accomplishments and services?
N/A
What administrative improvements did your agency make in fiscal year 2009-10 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements.
We are constantly implementing new ideas.

Tuesday, June 07, 2011  
EBO Form 10

### FY 11 SMART Quarterly Performance Report

Page 2 of 2

#### Basic Agency

<b>Agency: 378 - Court Reporting Board</b>				<b>Program: 653 - PRO AND OCCU LICENSING AND REG</b>							
<b>Organization: -</b>				<b>Activity: -</b>							
<b>Key Goal:</b>											
Goal 1	To implement paperless records by 2014.								Governor's Priority:	2	
<b>Objectives and Quarterly Targets:</b>											
<b>Performance Measures</b>		<b>First Quarter</b>		<b>Second Quarter</b>		<b>Third Quarter</b>		<b>Fourth Quarter</b>		<b>Annual</b>	
<b>Objectives</b>	<b>Unit of Measure</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual*</b>	<b>Target</b>	<b>Actual*</b>	<b>Target</b>	<b>Actual*</b>
(O1-Quality) Transfer records to paper less.	Paperless records system	--	Get information for paperless records.	--	--get information on system	--	--	--	--	Paperless records system	
(O2-Efficiency) Maintain current cost per licensee.	cost per licensee.	--	cost is the same.	--	-Yes	--	--	--	--	Maintain cost per license	
* Actual performance data is not currently available for this quarter.											

## **Statutory Authority**

### **Chapter 8B – Court Reporters**

#### **§ 34-8B-1. Legislative findings.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

The Legislature hereby finds and declares that it is the policy of the state to promote the skill, art, and practice of court reporting in order to assure that court reporters possess the necessary skills and qualifications and that a board be established to prescribe the qualifications of court reporters and to issue licenses to persons who demonstrate their ability and fitness for the licenses. This chapter is intended to establish and maintain a standard of competency for individuals engaged in the practice of court reporting and for the protection of the public, in general, and for the litigants whose rights to personal freedom and property are affected by the competency of court reporters. The examination, licensing, and supervision of the conduct and proficiency of court reporters are integrally related to the effective, impartial, and prompt operation of the judicial system of the State of Alabama.

#### **§ 34-8B-2. Definitions.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

As used in this chapter, the following terms shall have the following meanings:

- (1) ACRA. The Alabama Court Reporters Association.
- (2) Board. The Alabama Board of Court Reporting.
- (3) Certified court reporter (C.C.R.). Any person licensed pursuant to this chapter to practice verbatim reporting.
- (4) Certified shorthand reporter (C.S.R.). A designation of certification given by the Alabama Court Reporters Association for its certified members.
- (5) Court reporter. Any person who is engaged in the practice of court reporting as a profession, including persons who actually report judicial proceedings in courts and persons who make verbatim records.
- (6) Court reporting. The making of a verbatim record by means of manual shorthand, machine shorthand, closed microphone voice dictation silencer, or by other means of personal verbatim reporting of any testimony given under oath before, or for submission to, any court, referee, or court examiner or by any board, commission, or other body, or in any other proceeding where a verbatim record is required. The taking of a deposition is the making of a verbatim record.
- (7) CVR. Certified verbatim reporter.
- (8) Fiscal year. October 1 through September 30.
- (9) Fund. The Alabama Board of Court Reporting Fund.
- (10) NCRA. The National Court Reporters Association.
- (11) NVRA. The National Verbatim Reporters Association.
- (12) RPR. Registered professional reporter.
- (13) Secretary. A person selected by the board to serve as secretary of the board.

**§ 34-8B-3. License required.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

No person, except as otherwise provided by law, shall practice or attempt to practice court reporting in this state or hold himself or herself out as a court reporter unless the person is a licensed court reporter.

**§ 34-8B-4. (Final placement and text of 2010 legislation is subject to editorial action of the Code Commissioner) Alabama Board of Court Reporting--Creation; composition; meetings; compensation.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

(a) There is created the Alabama Board of Court Reporting. The board shall be operative within 60 days of June 1, 2006. ACRA shall provide administrative support to the board until such time as the board employs sufficient employees to implement and administer this chapter.

(b) The board shall consist of seven members as follows:

(1) Four court reporters certified by ABCR, NCRA, NVRA, or by the board, two of whom shall be employed in official capacities and two of whom shall be employed in a freelance setting.

(2) Two members in good standing with the Alabama State Bar Association.

(3) One additional member.

(c) Appointments to the board shall be made as follows:

(1) The Governor shall appoint one official court reporter, one freelance court reporter, and one member of the Alabama State Bar Association. ACRA, NCRA, NVRA, and the Alabama State Bar Association shall respectively submit a list of three names for each appointment to the Governor for consideration.

(2) The Lieutenant Governor shall appoint one member of the Alabama State Bar Association from a list of three names submitted by the Alabama State Bar Association.

(3) The President Pro Tempore of the Senate shall appoint one member who is an official court reporter from a list of three names submitted by ACRA.

(4) The Speaker of the House of Representatives shall appoint one member who is a freelance court reporter from a list of three names submitted by ACRA.

(5) The Chief Justice of the Alabama Supreme Court shall appoint one member from a list of three names submitted by the Administrative Office of Courts.

(d) All members of the board shall be citizens of the United States and the State of Alabama. The lists of names shall be submitted by the designated organizations on or before June 1, 2006. The initial terms shall begin January 1, 2007, and all appointments shall be made prior to January 1 of every year.

(e) The initial members shall serve the following terms as designated by the Governor:

(1) Three members shall serve for two years.

(2) Two members shall serve for three years.

(3) Two members shall serve for four years.

(f) Subsequent terms of office shall be for four years. No member shall serve more than two consecutive terms. In the event of a vacancy, the appointing authority for the position shall fill

the vacancy. Each member shall serve until his or her successor is duly appointed and qualified.

(g) The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The board shall annually report to the Legislature by the second legislative day of each regular session to what extent the board has complied with the diversity provisions provided for in this subsection.

(h) At its first meeting each calendar year, the board shall elect a chair, vice chair, and secretary from its membership. No member shall be elected to serve more than two consecutive years in the same office.

(i) After the initial appointments have been made, the board shall meet by January 2007, for the purpose of organizing and transacting business. Thereafter, the board shall meet not less than twice annually and as frequently as deemed necessary by the chair or a majority of the members. The board shall meet at such time and place as designated by the board. A quorum shall consist of four members.

(j) Board members shall receive the same travel expenses and per diem as state employees pursuant to Article 2, commencing with Section 36-7-20, Chapter 7, Title 36. The compensation and expenses shall be paid out of the funds of the board. Reimbursement shall not be made if funds are insufficient.

**§ 34-8B-5. (Final placement and text of 2010 legislation is subject to editorial action of the Code Commissioner) Alabama Board of Court Reporting--Duties.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

The board shall have all of the following duties and responsibilities:

- (1) Act on matters concerning competency licensure only and the process of granting, suspending, reinstating, and revoking a license.
- (2) Establish a procedure for the investigation of complaints against licensed court reporters and for the conduct of hearings in which complaints are heard.
- (3) Set a fee schedule for granting licenses and renewals of licenses subject to the Alabama Administrative Procedure Act.
- (4) Maintain a current register of licensed court reporters and a current register of temporarily licensed court reporters. Registers shall be matters of public record.
- (5) Maintain a complete record of all proceedings of the board.
- (6) Submit an annual report detailing the proceedings of the board to the Governor for the previous fiscal year and file a copy of the report with the Secretary of State.
- (7) Adopt continuing education requirements no later than October 1, 2007. Requirements shall be implemented no later than January 1, 2008, and shall include all courses approved by the Alabama State Bar for continuing legal education.
- (8) Determine the content of and administer examinations to be given to applicants for licensure as certified court reporters and issue numbered licenses to applicants found qualified.
- (9) Maintain records of its proceedings and a register of all persons licensed by the board which shall be a public record and open to inspection.

**§ 34-8B-6. Complaints; hearing; penalties; appeal.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

(a) All complaints shall be in writing, signed by the person making the complaint, and addressed to the chair of the board. All complaints shall contain the name and address of the person against whom the complaint is brought and a description of the conduct giving rise to the complaint. Complaints shall be submitted within 90 days of such conduct and a copy shall be provided to the licensed court reporter within five business days of receipt by the board. The copy shall be sent by certified mail or by such other means of delivery to ensure that the licensed court reporter charged in the complaint shall receive actual notice. After investigation of the charges, the board shall conduct a hearing at which time it may dismiss the charges, may impose a fine not to exceed one thousand dollars (\$1,000), or may revoke or suspend the license of the licensee.

(b) The licensee may appeal a decision of the board imposing an administrative fine or revoking or suspending a license by submitting a request to the board for reconsideration within 90 days following the decision of the board. If no resolution is achieved, further appeals shall be submitted to the circuit court in the jurisdiction of the residence of the licensee. Any licensee whose application for licensure or for renewal of licensure was denied, or whose license was revoked, may reapply after 12 months have elapsed. The board may then reissue a license or rescind any disciplinary action if a majority of the members vote in favor of the action.

#### **§ 34-8B-7. Promulgation of rules.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

The board shall promulgate rules necessary to implement and administer this chapter. The rules shall be adopted pursuant to the Alabama Administrative Procedure Act. The rules shall be published in the standards of professional practice and made available to all licensees.

#### **§ 34-8B-8. (Final placement and text of 2010 legislation is subject to editorial action of the Code Commissioner) Violations; penalties.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

After January 1, 2007, any person who undertakes or attempts to undertake the practice of court reporting for remuneration without first having procured a license, or who knowingly presents or files false information with the board for the purpose of obtaining a license or who violates this chapter shall be guilty of a Class C misdemeanor. A person who is not licensed may not bring or maintain an action to recover fees for court reporting services that he or she performed in violation of this chapter. Whenever it appears to the board that any court reporter has violated this chapter, the board may, in its own name, petition the circuit court of the county in which the violation occurred to enjoin the violation.

#### **§ 34-8B-9. (Final placement and text of 2010 legislation is subject to editorial action of the Code Commissioner) Recovery by board of damages; liability of board members.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

(a) The board may sue and be sued in its own name to recover actual or compensatory damages, including interest and court costs, sustained as the result of disciplinary action taken against any licensee or any other person who violates this chapter or rules promulgated hereunder.

(b) All members of the board shall be immune from civil liability while acting within the scope of their duties as board members.

**§ 34-8B-10. Examinations and testing; unauthorized use of license number.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

(a) To be licensed as a court reporter, an applicant shall be a United States citizen or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, and shall pass the Written Knowledge Examination administered by NCRA and shall pass an Alabama skills examination or provide documentation of having passed the NCRA Registered Professional Reporter Examination or NVRA CVR Examination. The board shall examine or establish, or both, examination and testing procedures to enable the board to ascertain the competency of applicants for licensure. Each such skills examination shall be given at least twice each calendar year. Applications for licensure shall be signed and sworn by the applicants and submitted on forms furnished by the board. An applicant who furnishes the board with satisfactory proof of graduation from an accredited high school or its equivalent shall, upon payment of a reasonable fee in an amount determined by the board, be examined by the board. All applicants who are found qualified to engage in the practice of court reporting pursuant to this chapter shall be issued a license as a certified court reporter and an identifying number. The license shall be valid until September 30th of the year of its issuance.

(b) No certified court reporter may authorize the use of his or her license number on any transcript not produced through his or her personal effort or supervision, or both. Violation of this subsection may be grounds for license suspension or revocation.

(c) The board shall hold at least two reporter examinations each year and may hold such additional examinations as are necessary. The secretary shall give public notice of the time and place of each examination at least 120 days prior to the date set for the examination. Any person desiring to take the examination shall file his or her application with the board at least 30 days prior to the date of the examination. The preparation, administration, and grading of the examination shall be governed by the rules prescribed by the board, but the board may engage ACRA to conduct the examination under the supervision of the board. Upon determining the results of the examination, the board shall notify each applicant as to whether the applicant has passed the examination. Notification shall be by written notice mailed to the applicant by certified mail to the applicant's address as indicated on the application.

**§ 34-8B-11. Reciprocity agreements; nonresident licenses; fees.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*



(a) The board shall enter into reciprocal agreements with any state, agency, or other entity that licenses, certifies, or registers court reporters (NCRA or NVRA, or both) if the board finds that the state, agency, or other entity has substantially the same or more stringent requirements than the board.

(b) The reciprocity agreement shall provide that the board shall license a person who is currently licensed, certified, or registered in another state or by another agency or other entity if that state, agency, or other entity agrees to license, certify, or register any licensees licensed pursuant to this chapter.

(c) Nonresident court reporters desiring to make a verbatim record of any testimony of a proceeding, the jurisdiction of which is within the courts of Alabama or where appeal to any court of Alabama is allowable by law, shall make annual application for a nonresident license. The applicant shall make application on the same forms as required of other applicants, shall pay a fee in an amount determined by the board, and shall present proof that the applicant is a competent licensed court reporter in another state. The board shall issue a nonresident license upon the finding that the applicant is a competent licensed court reporter in another state. The license shall be valid for a period not to exceed one year from the date of issuance. A nonresident court reporter shall reapply for licensure annually. An annual fee in an amount determined by the board shall be required.

(d) The board shall establish the fees appropriate in processing reciprocal licensing.

#### **§ 34-8B-12. Licensing fees.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

The annual fees for licensure pursuant to this chapter shall be established by the board and shall cover a 12-month period beginning October 1 of each year. All fees collected by the board shall be paid into the State Treasury to the credit of the Board of Court Reporting Fund which is hereby created. Moneys in the fund shall be subject to withdrawal only upon warrant of the state Comptroller to be issued upon certification of the secretary. Any funds remaining in the fund at the end of each fiscal year in excess of two hundred fifty thousand dollars (\$250,000), shall be available to the board to provide for the education and training of court reporters. At all times the board shall retain a sum not in excess of two hundred fifty thousand dollars (\$250,000), to meet any emergency which may affect the efficient operation of the board. No funds shall be withdrawn or expended except as budgeted and allocated pursuant to this chapter and only in amounts as stipulated in the general appropriations bill or other appropriations bills.

#### **§ 34-8B-13. Renewal of licenses.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

Each person licensed pursuant to this chapter shall apply for renewal of his or her license pursuant to dates established by the board. A renewal fee in an amount determined by the board shall be paid and thereupon the board shall issue a numbered license establishing that the holder is entitled to practice court reporting for the period determined by the board. The board shall require specific continuing education as a condition for license renewal. The board may

provide for the late renewal of a license which has lapsed and may require the payment of a late fee or an examination, or both, prior to issuing a renewal license. Licensees shall notify the board in writing of any change of address within 30 days of the change.

**§ 34-8B-14. Licensing of current court reporters; certified shorthand reporters.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

(a) Any person who is engaged in the practice of court reporting on June 1, 2006, and who provides to the board an affidavit setting forth his or her past education and work experience as a court reporter and an affidavit of a judge for whom he or she has worked as an official court reporter or three licensed attorneys, unrelated by blood or marriage to the person and who have utilized the services of the court reporter, which attests to the court reporter's proficiency in court reporting, upon payment of a fee in an amount determined by the board, shall be licensed to practice as a court reporter.

(b) Any member in good standing of ACRA licensed as a certified shorthand reporter on June 1, 2006, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this chapter and thereby may practice as a court reporter.

(c) Members of ACRA who hold the certified shorthand reporter certification and do not apply for certification within one year of June 1, 2006, shall be required to take the certified court reporter examination in order to become a certified court reporter.

**§ 34-8B-15. (Final placement and text of 2010 legislation is subject to editorial action of the Code Commissioner) Temporary license.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

(a) Any person who has engaged in the practice of court reporting in the State of Alabama for less than one year on June 1, 2006, and who provides to the board satisfactory proof of graduation from an accredited high school or its equivalent and the affidavits of three licensed attorneys, unrelated to the person by blood or marriage, who have utilized his or her services, and who attest to the person's proficiency in court reporting, shall, upon application to the board on forms approved by the board and payment of a fee in an amount determined by the board, be issued a temporary license to practice as a court reporter. This temporary license shall expire on the 60th day following the date upon which the next board-approved examination for licensure is given. No more than two additional temporary licenses shall be issued to any applicant who fails to pass the scheduled examination for licensure.

(b) Commencing on the effective date of the act adding this subsection, any person who is a graduate of a school of court reporting may receive a temporary license to practice as a court reporter from the board. Application for the temporary graduate license shall be made to the board, on forms approved by the board, and the payment of a fee in an amount determined by the board. The license shall be valid on the date of graduation and shall expire 18 months after issuance.

(c) In the event that a temporary license expires without the temporary licensee having passed the examination for full licensure, court reporting services by the temporary licensee shall

cease and desist immediately upon the expiration of the temporary license, and the board may not be held liable for lost income to the temporary licensee or to the court reporting firm.

**§ 34-8B-16. Inactive status.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

The board shall establish an inactive status for persons who are not actively engaged in the practice of court reporting.

**§ 34-8B-17. Disposition of funds; collection of fees.**

*The statutes are current through Act 2010-499 of the 2010 Regular Session.*

All moneys collected pursuant to this chapter shall be deposited into the Board of Court Reporting Fund. All expenses incurred by the board in implementing and administering this chapter shall be paid out of the fund provided that the expenses of the board shall not be in excess of the moneys in the fund. The board may charge and collect the following fees which shall be deposited into the fund:

- (1) An application fee for any temporary or regular license.
- (2) An examination fee.
- (3) A renewal fee for any temporary or regular license.
- (4) A reinstatement fee for any application for reinstatement of a temporary or regular license which has been revoked or suspended.
- (5) A fee for the renewal of a license after the due date which shall be increased 20 percent for each month or fraction thereof that payment is delayed, unless the delay is caused by conditions resulting from additional requirements imposed by the board. Notwithstanding the foregoing, delinquency of more than six months shall result in revocation of licensure.

**Proposed Legislation (HB 317)**

1        HB317  
2        127358-1  
3        By Representatives Buttram, Sanderford and McClendon  
4        RFD: Boards, Agencies and Commissions  
5        First Read: 22-MAR-11

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8 SYNOPSIS: Existing law provides for the Alabama Board  
9 of Court Reporting.

10 This bill would do all of the following:  
11 Eliminate board member compensation; eliminate the  
12 requirement that the board make an annual report to  
13 the offices of the Governor and Secretary of State;  
14 add entities that may administer the written  
15 knowledge examination; change the education  
16 requirement for court reporters from high school to  
17 an accredited court reporting program; provide a  
18 deadline date to make application for the  
19 grandfathering provision; provide that the  
20 temporary license authorized under current law  
21 would be effective 18 months from the date of  
22 issuance, not the graduation date; and authorize a  
23 change of information fee and reasonable processing  
24 fees.

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A BILL  
TO BE ENTITLED

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AN ACT

To amend Sections 34-8B-4, 34-8B-5, 34-8B-10, 34-8B-14, 34-8B-15, and 34-8B-17 of the Code of Alabama 1975, relating to the Alabama Board of Court Reporting; to eliminate board member compensation; to eliminate the requirement that the board make an annual report to the offices of the Governor and Secretary of State; to add entities that may administer the written knowledge examination; to change the education requirement for court reporters from high school to an accredited court reporting program; to provide a deadline date to make application for the grandfathering provision; to provide that the temporary license authorized under current law would be effective 18 months from the date of issuance, not the graduation date; and to authorize a change of information fee and reasonable processing fees.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-8B-4, 34-8B-5, 34-8B-10, 34-8B-14, 34-8B-15, and 34-8B-17 of the Code of Alabama 1975, are amended to read as follows:

"§34-8B-4.

"(a) There is created the Alabama Board of Court Reporting. The board shall be operative within 60 days of June 1, 2006. ACRA shall provide administrative support to the board until such time as the board employs sufficient employees to implement and administer this chapter.

1           "(b) The board shall consist of seven members as  
2 follows:  
3           "(1) Four court reporters certified by ABCR, NCRA,  
4 NVRA, or by the board, two of whom shall be employed in  
5 official capacities and two of whom shall be employed in a  
6 freelance setting.  
7           "(2) Two members in good standing with the Alabama  
8 State Bar Association.  
9           "(3) One additional member.  
10          "(c) Appointments to the board shall be made as  
11 follows:  
12          "(1) The Governor shall appoint one official court  
13 reporter, one freelance court reporter, and one member of the  
14 Alabama State Bar Association. ACRA, NCRA, NVRA, and the  
15 Alabama State Bar Association shall respectively submit a list  
16 of three names for each appointment to the Governor for  
17 consideration.  
18          "(2) The Lieutenant Governor shall appoint one  
19 member of the Alabama State Bar Association from a list of  
20 three names submitted by the Alabama State Bar Association.  
21          "(3) The President Pro Tempore of the Senate shall  
22 appoint one member who is an official court reporter from a  
23 list of three names submitted by ACRA.  
24          "(4) The Speaker of the House of Representatives  
25 shall appoint one member who is a freelance court reporter  
26 from a list of three names submitted by ACRA.

1           "(5) The Chief Justice of the Alabama Supreme Court  
2 shall appoint one member from a list of three names submitted  
3 by the Administrative Office of Courts.

4           "(d) All members of the board shall be citizens of  
5 the United States and the State of Alabama. The lists of names  
6 shall be submitted by the designated organizations on or  
7 before June 1, 2006. The initial terms shall begin January 1,  
8 2007, and all appointments shall be made prior to January 1 of  
9 every year.

10           "(e) The initial members shall serve the following  
11 terms as designated by the Governor:

12           "(1) Three members shall serve for two years.

13           "(2) Two members shall serve for three years.

14           "(3) Two members shall serve for four years.

15           "(f) Subsequent terms of office shall be for four  
16 years. No member shall serve more than two consecutive terms.  
17 In the event of a vacancy, the appointing authority for the  
18 position shall fill the vacancy. Each member shall serve until  
19 his or her successor is duly appointed and qualified.

20           "(g) The membership of the board shall be inclusive  
21 and reflect the racial, gender, geographic, urban/rural, and  
22 economic diversity of the state. The board shall annually  
23 report to the Legislature by the second legislative day of  
24 each regular session to what extent the board has complied  
25 with the diversity provisions provided for in this subsection.

26           "(h) At its first meeting each calendar year, the  
27 board shall elect a chair, vice chair, and secretary from its



1 membership. No member shall be elected to serve more than two  
2 consecutive years in the same office.

3 "(i) After the initial appointments have been made,  
4 the board shall meet by January 2007, for the purpose of  
5 organizing and transacting business. Thereafter, the board  
6 shall meet not less than twice annually and as frequently as  
7 deemed necessary by the chair or a majority of the members.  
8 The board shall meet at such time and place as designated by  
9 the board. A quorum shall consist of four members.

10 "(j) Board members shall receive the same travel  
11 expenses and per diem as state employees pursuant to Article  
12 2, commencing with Section 36-7-20, Chapter 7, Title 36. The  
13 ~~compensation and~~ expenses shall be paid out of the funds of  
14 the board. Reimbursement shall not be made if funds are  
15 insufficient.

16 "§34-8B-5.

17 "The board shall have all of the following duties  
18 and responsibilities:

19 "(1) Act on matters concerning competency licensure  
20 only and the process of granting, suspending, reinstating, and  
21 revoking a license.

22 "(2) Establish a procedure for the investigation of  
23 complaints against licensed court reporters and for the  
24 conduct of hearings in which complaints are heard.

25 "(3) Set a fee schedule for granting licenses and  
26 renewals of licenses subject to the Alabama Administrative  
27 Procedure Act.

1           "(4) Maintain a current register of licensed court  
2 reporters and a current register of temporarily licensed court  
3 reporters. Registers shall be matters of public record.  
4           "(5) Maintain a complete record of all proceedings  
5 of the board.  
6           "~~(6) Submit an annual report detailing the~~  
7 ~~proceedings of the board to the Governor for the previous~~  
8 ~~fiscal year and file a copy of the report with the Secretary~~  
9 ~~of State.~~  
10           "~~(7)~~(6) Adopt continuing education requirements no  
11 later than October 1, 2007. Requirements shall be implemented  
12 no later than January 1, 2008, and shall include all courses  
13 approved by the Alabama State Bar for continuing legal  
14 education.  
15           "~~(8)~~(7) Determine the content of and administer  
16 examinations to be given to applicants for licensure as  
17 certified court reporters and issue numbered licenses to  
18 applicants found qualified.  
19           "~~(9)~~(8) Maintain records of its proceedings and a  
20 register of all persons licensed by the board which shall be a  
21 public record and open to inspection.  
22           "§34-8B-10.  
23           "(a) To be licensed as a court reporter, an  
24 applicant shall be a United States citizen or, if not a  
25 citizen of the United States, a person who is legally present  
26 in the United States with appropriate documentation from the  
27 federal government, and shall pass the Written Knowledge

1 Examination administered by the board, ACRA, NCRA, or NVRA,  
2 and shall pass an Alabama skills examination or provide  
3 documentation of having passed the NCRA Registered  
4 Professional Reporter Examination or NVRA CVR Examination. The  
5 board shall examine or establish, or both, examination and  
6 testing procedures to enable the board to ascertain the  
7 competency of applicants for licensure. Each such skills  
8 examination shall be given at least twice each calendar year.  
9 Applications for licensure shall be signed and sworn by the  
10 applicants and submitted on forms furnished by the board. An  
11 applicant who furnishes the board with satisfactory proof of  
12 graduation from an accredited ~~high school~~ court reporting  
13 program or its equivalent shall, upon payment of a reasonable  
14 fee in an amount determined by the board, be examined by the  
15 board. All applicants who are found qualified to engage in the  
16 practice of court reporting pursuant to this chapter shall be  
17 issued a license as a certified court reporter and an  
18 identifying number. The license shall be valid until September  
19 30th of the year of its issuance.

20           "(b) No certified court reporter may authorize the  
21 use of his or her license number on any transcript not  
22 produced through his or her personal effort or supervision, or  
23 both. Violation of this subsection may be grounds for license  
24 suspension or revocation.

25           "(c) The board shall hold at least two reporter  
26 examinations each year and may hold such additional  
27 examinations as are necessary. The secretary shall give public

1 notice of the time and place of each examination at least 120  
2 days prior to the date set for the examination. Any person  
3 desiring to take the examination shall file his or her  
4 application with the board at least 30 days prior to the date  
5 of the examination. The preparation, administration, and  
6 grading of the examination shall be governed by the rules  
7 prescribed by the board, but the board may engage ACRA to  
8 conduct the examination under the supervision of the board.  
9 Upon determining the results of the examination, the board  
10 shall notify each applicant as to whether the applicant has  
11 passed the examination. Notification shall be by written  
12 notice mailed to the applicant by certified mail to the  
13 applicant's address as indicated on the application.

14 "§34-8B-14.

15 "(a) Any person who is engaged in the practice of  
16 court reporting on June 1, 2006, and who provides to the board  
17 an affidavit setting forth his or her past education and work  
18 experience as a court reporter and an affidavit of a judge for  
19 whom he or she has worked as an official court reporter or  
20 three licensed attorneys, unrelated by blood or marriage to  
21 the person and who have utilized the services of the court  
22 reporter, which attests to the court reporter's proficiency in  
23 court reporting, upon payment of a fee in an amount determined  
24 by the board, shall be licensed to practice as a court  
25 reporter. The deadline for receiving applications for  
26 grandfathering is December 31, 2011.

1           "(b) Any member in good standing of ACRA licensed as  
2 a certified shorthand reporter on June 1, 2006, upon payment  
3 of the licensure fee in an amount determined by the board,  
4 shall be automatically granted a license pursuant to this  
5 chapter and thereby may practice as a court reporter.

6           "(c) Members of ACRA who hold the certified  
7 shorthand reporter certification and do not apply for  
8 certification within one year of June 1, 2006, shall be  
9 required to take the certified court reporter examination in  
10 order to become a certified court reporter.

11           "§34-8B-15.

12           ~~"(a) Any person who has engaged in the practice of~~  
13 ~~court reporting in the State of Alabama for less than one year~~  
14 ~~on June 1, 2006, and who provides to the board satisfactory~~  
15 ~~proof of graduation from an accredited high school or its~~  
16 ~~equivalent and the affidavits of three licensed attorneys,~~  
17 ~~unrelated to the person by blood or marriage, who have~~  
18 ~~utilized his or her services, and who attest to the person's~~  
19 ~~proficiency in court reporting, shall, upon application to the~~  
20 ~~board on forms approved by the board and payment of a fee in~~  
21 ~~an amount determined by the board, be issued a temporary~~  
22 ~~license to practice as a court reporter. This temporary~~  
23 ~~license shall expire on the 60th day following the date upon~~  
24 ~~which the next board-approved examination for licensure is~~  
25 ~~given. No more than two additional temporary licenses shall be~~  
26 ~~issued to any applicant who fails to pass the scheduled~~  
27 ~~examination for licensure.~~

1           "~~(b)~~(a) Commencing on ~~April 21, 2010~~ the effective  
2 date of this act amending this subsection, any person who is a  
3 graduate of a school of an accredited court reporting program  
4 may receive a temporary license to practice as a court  
5 reporter from the board. Application for the temporary  
6 graduate license shall be made to the board, on forms approved  
7 by the board, and the payment of a fee in an amount determined  
8 by the board. ~~The license shall be valid on the date of~~  
9 ~~graduation and shall expire 18 months after issuance. The~~  
10 temporary license shall be valid for 18 months from the date  
11 of issuance.

12           "~~(c)~~(b) In the event that a temporary license  
13 expires without the temporary licensee having passed the  
14 examination for full licensure, court reporting services by  
15 the temporary licensee shall cease and desist immediately upon  
16 the expiration of the temporary license, and the board may not  
17 be held liable for lost income to the temporary licensee or to  
18 the court reporting firm.

19           "§34-8B-17.

20           "All moneys collected pursuant to this chapter shall  
21 be deposited into the Board of Court Reporting Fund. All  
22 expenses incurred by the board in implementing and  
23 administering this chapter shall be paid out of the fund  
24 provided that the expenses of the board shall not be in excess  
25 of the moneys in the fund. The board may charge and collect  
26 the following fees which shall be deposited into the fund:

1                   "(1) An application fee for any temporary or regular  
2 license.  
3                   "(2) An examination fee.  
4                   "(3) A renewal fee for any temporary or regular  
5 license.  
6                   "(4) A reinstatement fee for any application for  
7 reinstatement of a temporary or regular license which has been  
8 revoked or suspended.  
9                   "(5) A fee for the renewal of a license after the  
10 due date which shall be increased 20 percent for each month or  
11 fraction thereof that payment is delayed, unless the delay is  
12 caused by conditions resulting from additional requirements  
13 imposed by the board. Notwithstanding the foregoing,  
14 delinquency of more than six months shall result in revocation  
15 of licensure.  
16                   "(6) A change of information fee.  
17                   "(7) Necessary administrative fees may be charged by  
18 the board, including, but not limited to, reasonable costs for  
19 copying, labels, and lists."  
20                   Section 2. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.

## **Board Members**



Bob Riley  
Governor

### STATE OF ALABAMA Alabama Board of Court Reporting

2011 Berry Chase Place (36117)  
Post Office Box 240187  
Montgomery, Alabama 36124  
Telephone (334) 215-7233  
Fax (334) 215-7231  
[www.abcr.alabama.gov](http://www.abcr.alabama.gov)

February 4, 2011

Department of Examiners of Public Accounts  
Attn: Julie Garner  
P.O. Box 302251  
Montgomery, AL 36130

Dear Ms. Garner:

This letter serves to provide the requested board member information for the Audit.

Sabrina Lewis, Chair  
1116 Lake Point Court  
Birmingham, AL 35244  
Position: Court Reporter  
Term: April 7, 2009 to January 1, 2013

Aubrey Ford, Jr., Vice-Chair  
P.O. Box 830703  
Tuskegee, AL 36083-0703  
Position: Judicial Seat  
Term: January 5, 2007 to January 5, 2011

Lois M. Robinson, Secretary  
P.O. Box 66604  
Mobile, AL 36660  
Position: Freelance Court Reporter  
Term: December 31, 2009 to January 1, 2011

Suzanne B. Frazier, Vice-Chair  
801 N. Richard Arrington Jr. Blvd.  
Room 606 Criminal Justice Center  
Birmingham, AL 35203  
Position: Official Court Reporter  
Term: January 1, 2009 thru January 1, 2013

Tammy C. August  
P.O. Box 1234  
Killen, AL 35645  
Position: Freelance Court Reporter  
Term: January 6, 2010 to December 31, 2013

Mr. T. Kent Garrett  
184 Commerce Street  
Montgomery, AL 36104-2581  
Position: Attorney  
Term: March 01, 2010 to January 01, 2014

William M. Dawson  
2229 Morris Ave  
Birmingham, AL 35203  
Position: Attorney Seat  
Term: January 30, 2009 to January 1, 2013

#### Staff:

Paula Scout McCaleb, Executive Director  
Montgomery, AL

Brandy L. Isenhour, Operations Manager  
Wetumpka, AL

Bettie Carmack, Assistant Attorney General  
Montgomery, AL

Please contact me if any further information is needed. Thank you.

  
Paula McCaleb  
Executive Director



## **BOARD RESPONSE TO SIGNIFICANT ISSUES**



Bob Riley  
Governor

# STATE OF ALABAMA

## Alabama Board of Court Reporting

2011 Berry Chase Place (36117)  
Post Office Box 240187  
Montgomery, Alabama 36124  
Telephone (334) 215-7233  
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[www.abcr.alabama.gov](http://www.abcr.alabama.gov)

June 28, 2011

Mr. John E. Norris

*Director, Operational Division*

P.O. Box 302251

Montgomery, AL 36130-2251

Dear Mr. Norris:

Please find attached the Alabama Board of Court Reporting's response to the prior significant items to appear in the report to the Sunset Review Committee, as per your request. Thank you for the opportunity to include our response in your report.

Sincerely,



Paula McCaleb

*Executive Director*

## RESPONSE TO PRIOR SIGNIFICANT ISSUES

### **Significant Issue 2009-02**

The Alabama Board of Court Reporting has demonstrated good faith, in resolving the prior findings regarding errors in our enabling statute, by consistently introducing legislation that would correct all of these items. In the 2011 session, HB 317 passed the House, and received all but its final third reading in the Senate. Although this was simply a housekeeping Bill and had no opposition or controversy, we were unsuccessful in getting this Bill on the Senate calendar for a final vote. We ask for the Sunset Review Committee to consider sponsoring this same legislation as a group in the 2012 Legislation Session so that we may have the tools necessary to first resolve the finding and ultimately to complete our mission of public protection.

### **Significant Issue 2008-6**

The Board has discussed and reviewed our appropriate role in gifting at length since we were initially created. We have discovered through this process that the real regulation of gifting is already covered under the jurisdiction of the State Bar, and we have notified them of this fact. The enabling act of the Alabama Board of Court Reporting does not address this matter at all. Although the Board has considered adopting the NCRA ethical standards under the Rules and Regulations, which would create an ethical violation for those licensees involved in gifting, the ABCR was given no statutory authority to sanction court reporting firms (only individuals). Therefore, this could cause an extreme burden for licensees who own their own firms when competing with the gifting firms whose management may not be a licensee and outside of our authority. Significant legislation would be required to fully resolve this finding to the satisfaction of our licensees. The Board has worked to educate our licensees on this situation through newsletters and our web site. We will continue communications with the State Bar and with our licensees on this matter. Attached is an advisory opinion from the National Court Reporters Association and the State Bar for your review. In conclusion, we welcome your guidance in resolving this matter.

## Advisory Opinion 27

### Reasonableness of the amounts set forth contained in Provision 8 (1995)

#### Statement of Facts

The Board of Directors of the Association requested the Committee on Professional Ethics to render an advisory opinion regarding the reasonableness of the amounts set forth in the nominal gift exception contained in Provision No. 8 of the Code of Professional Ethics.

#### Discussion

Provision No. 8 currently provides:

*The Member Shall. . . .*

Refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$25 per transaction and \$50 in aggregate per recipient each year.

The Board of Directors of the Association adopted Provision No. 8 of the Code because it believed that the practice of providing gifts, rewards, or incentives to attorneys, clients or their representatives or agents undermines and dilutes the integrity of the reporting profession and the status of the reporter as a neutral and impartial officer of the court. An arrangement whereby a reporter gives gifts, rewards, or incentives to attorneys, clients or their representatives or agents creates in the eye of the public the appearance of the reporter's partiality or favoritism towards such persons. Thus, the neutral and impartial officer of the court role that reporters play in the judicial process is compromised and diminished by such practices.

From its adoption in 1993, Provision No. 8 recognized an exception for nominal items (i.e., pens, pencils, coffee mugs and other advertising paraphernalia or modest forms of meals or entertainment) that would not be viewed as a compromise of the reporter's neutrality. After reviewing various concerns, the Committee concluded that the dollar amounts set forth in the Provision were too low and recommended to the Association's Board of Directors that more realistic levels be established. Specifically, the Committee recommended that (1) the \$25 per transaction limitation should be dropped altogether; and (2) the aggregate limit on gifts or incentive items to any one recipient in any one year should be increased from \$50 to \$100.

Accordingly, at its meeting in March 1995, the Board of Directors of the Association revised Provision No. 8, as follows:

*The Member Shall. . . .*

Refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for items that do not exceed \$100 in the aggregate per recipient each year.

By way of clarification, the Committee notes that Provision No. 8 is not designed to prevent or deter members' practices relating to volume or price discounting of their reporting services. Nonetheless, the Provision is designed to prevent the use of gifts and incentive programs the use of which undermines and dilutes the fact and appearance of the reporter as an impartial and independent officer of the court.

This Advisory Opinion No. 27 amends and supersedes Advisory Opinion No. 13.

## **Conclusion**

The Committee on Professional Ethics believes that gifts, awards and other incentive programs may compromise, or be viewed as compromising, the neutrality and impartiality of a reporter. The Committee further recognizes that giving certain nominal items should not compromise or be viewed as compromising such neutrality and impartiality. The aggregate dollar amount for such nominal gifts is therefore increased from \$50 to \$100 per recipient per year.

THIS PUBLIC ADVISORY OPINION REFLECTS THE STATUS OF THE LAW IN MOST JURISDICTIONS. MEMBERS ARE REQUIRED TO CONFORM TO THE ACCEPTED PRACTICES SET FORTH IN THIS PUBLIC ADVISORY OPINION TO THE EXTENT THAT SUCH PRACTICES ARE CONSISTENT WITH THEIR OWN APPLICABLE STATE AND LOCAL LAWS, RULES AND REGULATIONS.

See highlighted excerpt from ABA Rule 1.5(b) below. I looked for the full ABA Formal Opinion 93-379 from which it came but could not find a copy. This is an Alabama Bar opinion below.

### Opinion Number: 2005-02



#### Billing Client for Attorney's Fees, Costs and Other Expenses

The Disciplinary Commission, in RO-94-02, addressed the issues surrounding a lawyer's billing a client for attorney's fees, costs and other expenses incurred during the representation of the client. Basically, the Disciplinary Commission's opinion adopted ABA Formal Opinion 93-379.

The instant opinion reaffirms the Disciplinary Commission's adoption of and adherence to that referenced formal opinion of the ABA.

#### DISCUSSION:

One of the primary factors considered by a client when retaining a lawyer is the fee to be paid by the client for the lawyer's providing legal representation to the client. Incidental to the lawyer's fee, for which the client will be responsible, are those expenses and costs incurred by the lawyer during the representation of the client.

Rule 1.4(b), requires that a lawyer explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation. Inherent in this initial consultation with a client would be some discussion of the fee to be charged by the lawyer, and possibly reimbursement to the lawyer for expenses he or she incurs during the representation of the client.

in those situations where there is no pre-existing lawyer-client relationship, Rule 1.5(b), Alabama Rules of Professional Conduct, encourages the lawyer to communicate to the client, preferably in writing, the basis or rate of the fee to be charged by the lawyer for representing the client. The Rule suggests that this communication occur "before or within a reasonable time after commencing the representation." A.R.P.C., 1.5(b).

The Comment to Rule 1.5 encourages that "... an understanding as to the fee should be promptly established." The lawyer is also given an opportunity at the outset of representation to fully discuss and address any concerns which the client may have concerning the total fee, which would obviously include costs and expenses to be reimbursed to the lawyer by the client.

Additionally, Rule 1.5(c) states:

#### "Rule 1.5 Fees

(c)... A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated."

Rule 1.5(a), A.R.P.C, also prohibits a lawyer from entering into an agreement for, or charging, or collecting a clearly excessive fee. In the past, the Disciplinary Commission has reviewed allegations of clearly excessive fees in the disciplinary process. Due consideration is given, in addressing those type of complaints and fee disputes, to the total fee to be charged to the client by the lawyer, which would necessarily include reimbursed costs and expenses.

For that reason, the lawyer should, when assessing the reasonableness of the fee, take into consideration, not only the basic attorney fee, but the total amount to be paid by the client, including costs and expenses reimbursed to the lawyer. The primary focus of the assessment should be to determine whether the total charges to the client are reasonable.

The basic costs or expenses incurred by the lawyer in representing the client can be broken down into two basis categories: (1) Those costs which are incurred by the lawyer within the firm itself, e.g., photocopying, postage, audio and videotape creations, producing of exhibits and the like; and, (2) Costs incurred external of the law firm or outsourced by the law firm in further representation of the client, e.g., depositions, production of records from a third party, travel and lodging and the like. In ABA Formal Opinion 93-379, charges other than professional fees are broken down into three groups, for discussion: (A-1) General overhead; (B-2) disbursements; and (C-3) in-house provision of services. With regard to overhead, said opinion states:

"In the absence of disclosure to the client in advance of the engagement to the contrary, the client should reasonably expect that the lawyer's cost in maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities and the like would be subsumed within the charges the lawyer is making for professional services."

Therefore, that opinion does not consider overhead as an expense which is to be passed along to the client independent of the basic fee for professional legal services.

With regard to disbursements (B-2) above, the opinion points out that it would be improper "... if the lawyer assessed a surcharge on these disbursements over and above the amount actually incurred unless the lawyer herself incurred additional expenses beyond the actual cost of the disbursement item." This would include, but not be limited to, litigation expenses such as jury consultants, mock trials, focus groups and the like. **The opinion also points out that if a lawyer receives any type of discounted rate or benefit points, then those discounted rates or benefit points should be passed along to the client.**

With regard to (C-3) above, the opinion states that "... the lawyer is obliged to charge the client no more than the direct cost associated with the service ... plus a reasonable allocation of overhead expenses directly associated with the provision of the service ...". The obvious reasoning behind this approach is that the lawyer should not utilize the lawyer-client relationship, beyond the fees for professional services, to "manufacture" a secondary source of income by inflating costs and expenses billed to a client. This approach philosophically agrees with Rule 1.5's prohibition against clearly excessive fees. Since the basic lawyer's fee is governed by a "reasonableness" approach, likewise, all fees and expenses which are charged back to a client during the course of the representation should be reasonable, and not considered as a secondary opportunity for a lawyer to generate additional income from the lawyer-client relationship. In reviewing this aspect of the lawyer-client relationship, it is also necessary to consider possible abuses by lawyers of a lawyer-client relationship with regard to fees charges for the lawyer's professional services. ABA Formal Opinion 93-379 recognizes two possible scenarios where a lawyer's billing practices would contravene the Rules of Professional Conduct. In one situation, the lawyer bills more than one client for the same hours spent. If a lawyer appears on behalf of multiple clients for one docket call, with each client being a separate case file and separate lawyer-client relationship, may the lawyer bill each file for the total number of hours spent at the docket call? The obvious answer to this would be no. Otherwise, the lawyer would be guilty of

using a multiplier for his time spent on behalf of a client which would be not only misleading, but, in some instances, rise to the level of fraud. The classic example would be a lawyer appointed to represent indigent defendants in criminal cases. The lawyer receives notices that he has three separate clients on the same morning docket. The lawyer sits and participates throughout the docket which spans some two hours. Upon returning to his office, the lawyer then bills each of the client files the two hours expended in court, totaling hours in multiple of the number of client files presented during that docket.

The situation would develop whereby a lawyer would actually be billing more hours than actually expended by the lawyer, which would contravene not only public policy, but also the Rules of Professional Conduct.

A second situation involves a lawyer who performs work for one client while engaged in an activity for which he bills another client. The classic example is the lawyer who flies from one city to another for a deposition on behalf of Client A. The time spent by the lawyer in traveling to and conducting the deposition would be billed to Client A.

However, during the flight, the lawyer works on files for Client B. May the lawyer also charge Client B for the same time for which he is billing Client A? Again, the obvious answer would be no. To allow otherwise would constitute double billing by the lawyer for his or her time.

Lastly, there is a possibility that lawyers "recycle"<sup>11</sup> documents and research on behalf of clients. The classic example arises where a lawyer has done a significant amount of research and drafted memoranda, pleadings, or other documents on behalf of a client. The client is billed for this research and these documents. Later, the lawyer is hired by a new client, but in discussing the case with the new client, the lawyer realizes that he or she may be able to utilize the research and documents created for the predecessor client. May the lawyer now charge the same number of hours billed to the initial client, to this subsequent client, even though the actual time will not be necessary to recreate the research and documents in question? Again, the obvious answer would be no.

The Commission suggests that lawyers review their office practices with regard to fee contracts and letters of engagement to ensure compliance with the above-discussed fee and expense issues.

JAM/vf

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